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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/966,793	09/28/2001	David James Van Eperen	KCC-16,794	5085

35844 7590 11/10/2003

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EXAMINER

AFTERGUT, JEFF H

ART UNIT	PAPER NUMBER
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1733

DATE MAILED: 11/10/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

CLO13

Office Action Summary

Application No.

09/966,793

Applicant(s)

VAN EPEREN ET AL.

Examiner

Jeff H. Aftergut

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 10, 11.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art in view of Japanese Patent 9-131364 and Westphal et al for the same reasons as set forth in paper no. 9, paragraph 8.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-24 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 of copending Application No. 09/967,024 in view of the admitted prior art and Japanese Patent 9-131,364 for the same reasons as presented in paper no. 9, paragraph 10.

This is a provisional obviousness-type double patenting rejection. It should be noted that the notice of allowance has been mailed in 09/967,024.

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Response to Arguments

5. Applicant's arguments filed 10-20-03 have been fully considered but they are not persuasive.

The applicant essentially argues that the reference to Westphal is so different from that of Japanese Patent '364 and the admitted prior art that one skilled in the art would not have been led to look to the reference and that the vacuum conveyor did not act upon the disposable undergarments in Westphal in the same manner as that of Japanese Patent '364 and therefore it would not have been obvious to incorporate the vacuum conveyor of Westphal et al in the operation of the admitted prior art and Japanese Patent '364. The applicant is advised that these arguments have not been found to be persuasive.

It is agreed that Japanese Patent '364 suggested a Velcro type of arrangement for retaining the specified portions of the undergarment prior to the side seam folding operation. The grounds of rejection is simply that one skilled in the art would have readily appreciated that a vacuum conveying mechanism would have been an alternative conveying device for the undergarment assemblies in the admitted prior art and Japanese Patent '364. the applicant addresses the manner in which the sides are folded in Westphal et al and the manner in which the article are being fed by the conveyor mechanism. It should be noted that the reference to Japanese Patent '364 clearly suggested folding and feeding the articles in the same manner as recited with a conveyor system, however the conveyor is not a vacuum conveyor. In the feeding in Japanese Patent '364, the undergarment are opened up prior to folding the sides inward toward the main body. The applicant is advised that in Westphal, prior to energizing of the plunger, the undergarments were fed along the conveyor and opened up. While in Westphal, the

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undergarments were fed in a direction which was perpendicular to the feed direction of the undergarments of Japanese Patent '364, one skilled in the art at the time the invention was made would have readily appreciated that the conveying mechanism would have been fully capable of feeding the undergarment in the manner described by Japanese Patent '364. additionally, the admitted prior art admitted that vacuum conveyors were known (note that the vacuum conveyors of the prior art appear to provide vacuum in the central region of the chassis at 15 inches of water, page 4, lines 2-5). One would have reasonably expected success and additionally would have had the mechanical know how to understand how to substitute the Velcro type conveying mechanism of Japanese Patent '364 with the vacuum conveying mechanism of Westphal. The substitution of one known means for another where the mechanisms performed the same function would have been viewed as a substitution which was within the skill level of the ordinary artisan. It is well settled that, where, as here, two equivalents are interchangeable for their desired function, an express suggestion of the desirability of the substitution of one for the other is not needed to render such substitution obvious, In re Fout, 213 USPQ 532, In re Siebentritt, 152 USPQ 618.

The applicant argues that there are zones of vacuum which are applied in the vacuum mechanism of the claimed invention (where the edge regions have less vacuum applied than the central regions of the conveyed articles), however such is not claimed in the claims. Note that as such the claims are not commensurate in scope with the applicant's arguments.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

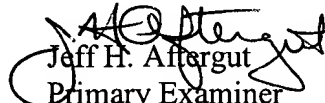
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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeff H. Aftergut whose telephone number is 703-308-2069. After December 20, 2003, the examiner can be reached to 571-272-1212. The examiner can normally be reached on Monday-Friday 6:30-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on 703-308-3853. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.


Jeff H. Aftergut
Primary Examiner
Art Unit 1733

JHA
November 7, 2003